

(PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 BY A PERSON IN STATE OR FEDERAL CUSTODY)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

RECEIVED
USDC CLERK, COLUMBIA, SC
2021 JAN 27 PM 1:34

ROBERTO ARCE JR, 77887-054)
Petitioner)
FEDERAL PRISON CAMP)
P.O. BOX 699)
ESTILL, SC 29918)
 (Full name under which you were convicted;)
 prison number; place of confinement; and)
 full mailing address)
 vs.)
STEVIE KNIGHT, WARDEN)
Respondent(s) CAMP)
MELISSA FORSYTH, ADMINISTRATOR)
 (Name of Warden or other authorized)
 person having custody of petitioner))
 _____)

Civil Action No. 9:21-cv-256-DCN-MHC
(to be assigned by Court)

Petition for Writ of Habeas Corpus
Pursuant to 28 U.S.C. § 2241

RECEIVED USDC
CLERK, CHARLESTON, SC
2021 JAN 28 PM 12:12

Read the instructions attached to this form before using this form. Also, read the entire petition form before filling it out. Answer all of the questions, placing a N/A for those questions which do not apply to your claim(s).

1. This petition concerns: (Check applicable blank.)

_____ a federal conviction

_____ a federal sentence

_____ pre-trial detention

_____ parole

_____ prison disciplinary action or other action resulting in loss of good-time credits

____ sentence calculation or loss of sentence credits by prison
X other (explain briefly) Earned-Time credits per the First Step Act,
18 U.S.C. § 3632(d)(4)(A).

BACKGROUND INFORMATION

2. Your Place of Confinement (check applicable blank):

X federal prison
 ____ state prison
 ____ local jail or detention center
 ____ mental health facility
 ____ other (explain briefly) _____

3. If you have been convicted and sentenced, provide the following information:

a. Name and location of court which imposed sentence: _____
SOUTHERN DISTRICT OF NEW YORK-NEW YORK NY

b. Criminal case number: 16-CR-643(NRB)

c. Charge(s) on which you were convicted: _____

d. Your plea was (check one):

XX not guilty
 ____ guilty
 ____ nolo contendere

e. If you were found guilty after a plea of not guilty, that finding was made by (check one):

XX a jury
 ____ a United States District Judge without a jury
 ____ a United States Magistrate Judge without a jury

f. Date upon which sentence was imposed and the terms of the sentence: _____
 10-30-2018
 120 MONTHS / 5 YEARS SUPERVISED

4. If you are awaiting trial on criminal charges, provide the following information:

- a. Name and location of court in which charges are pending: N/A

- b. Criminal case number: N/A
- c. Charge(s) that are pending against you: N/A

- d. Your attorney's name, address, and telephone number: N/A

5. If you are detained in a mental health facility, provide the following information:

- a. How you were committed:
 _____ by a court for evaluation
 _____ by a court after being found not criminally responsible
 _____ involuntary civil commitment
 _____ other (explain briefly) N/A

- b. When were you committed? N/A

6. Are you presently represented by an attorney in any case(s) related to your imprisonment?
 YES X NO

If yes, explain what case(s) and list the name, address, and phone number of your attorney(s):

PRIOR LEGAL ACTIONS CHALLENGING CONVICTION/SENTENCE

7. For federal prisoners, did you appeal the judgment of conviction or imposed sentence which you are currently serving?

10. For federal prisoners, have you filed previous petitions for habeas corpus, or any other applications, petitions, or motions (other than § 2255) with respect to the challenged conviction(s) or sentence(s)?

 YES XX NO

If yes, provide the following information for each case or motion:

- a. Type of case or motion: _____
- b. Name of Court: _____
- c. Case number: _____
- d. Date filed: _____
- e. Result (affirmed, dismissed, still pending): _____
- f. Date of order giving result: _____
- g. Case citation or opinion number (if known): _____

Note: If you filed more than one case or motion, attach an additional sheet of the same size and give all the information requested in Question 10, a through g, for each case or motion. On the continuation page, use number 10, a through g, to number your responses.

11. For federal prisoners, have you sought a certificate of appealability regarding denial of a motion under 28 U.S.C. § 2255, or petitions for habeas corpus, or any other applications, petitions, or motions with respect to the challenged conviction(s) or sentence(s)?

 YES XX NO

If yes, give the following information for each request for certificate of appealability:

- a. Name of Court: _____
- b. Result: _____
- c. Date of Result: _____
- d. Citation or number of opinion: _____

Note: If you requested a certificate of appealability more than once, attach an additional sheet of the same size and give all the information requested in Question 11, a through d for each request. On the continuation page, use number 11, a through d, to number your responses.

ADMINISTRATIVE PROCEEDINGS

12. If you are challenging a Federal Bureau of Prisons decision, did you file a request and appeal through all of the available procedures in the administrative remedy program?

 X YES NO

- a. If yes, did you seek an informal resolution of your complaint, the initial step under 28 C.F.R. § 542.13?
☒ YES ☐ NO
- b. If yes, did you file a formal Request(s) for Administrative Remedy (Form BP-9) concerning the BOP decision?
☒ YES ☐ NO
- c. If yes, did you file an Administrative Remedy Appeal (Form BP-10)?
☐ YES ☒ NO (FUTILE)
- d. If yes, did you file a "final administrative appeal" under 28 C.F.R. § 542.15 concerning the BOP decision?
☐ YES ☒ NO (FUTILE)
- e. If you answered no to any section of this question, explain why you did not use any available procedures in the remedy program: Any further exhaustion would be futile due to a narrow dispute of statutory construction which is exempt from the exhaustion process.

13. If you are challenging a South Carolina Department of Corrections decision, did you file a request and appeal through all of the available procedures in the prisoner grievance system?
☐ YES ☐ NO

- a. If yes, list the prisoner grievance procedures you pursued: N/A

- b. If no, explain why you did not use any available procedures in the prisoner grievance system:

N/A

- c. Did you appeal the final decision of the South Carolina Department of Corrections to the South Carolina Administrative Law Court?
☐ YES ☐ NO N/A

- d. Explain why, if you answered no: N/A
- e. Did you appeal the final decision of the South Carolina Administrative Law Court to the South Carolina Court of Appeals?
YES NO
- f. Explain why, if you answered no: N/A
- g. Did you appeal the final decision of the South Carolina Court of Appeals to the South Carolina Supreme Court?
YES NO
- h. Explain why, if you answered no: N/A
14. If you are a prisoner challenging a parole revocation decision, complete the following:
- a. Date of revocation decision: N/A
- b. Did you appeal the revocation decision?
YES NO
- c. If yes, what appellate process did you pursue (i.e. what court filed in; result; if further appeal was filed):
N/A
- d. If you did not appeal the revocation, explain why you didn't appeal: N/A

GROUND FOR HABEAS RELIEF

15. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. Conclusions that are not supported by

specific facts are insufficient. If necessary, attach additional pages to raise additional grounds or provide additional facts. Do not cite any law in your statement of facts.

a. Ground One:

Federal Correctional Institution Estill is a facility within
the Federal Bureau of Prisons has failed to apply his earned
time credits for "Evidence-Based Recidivism Reduction Pro-
gramming" under the First Step Act, 18 U.S.C. § 3632(d)(4)(A).

Supporting FACTS: (state briefly without citing cases or law.)

A review of Petitioner's Sentence Computation Sheet does
not reflect the "Earned-Time" credits.

Have you presented Ground One in a prior court action or administrative proceeding?

X YES NO

If yes, explain what court action or administrative proceeding, the result, and date of the result, including any appeals:

BOP Administrative Remedy Process

b. Ground Two:

Petitioner's sentence duration has been impacted by the BOP's
failure to credit his sentence.

Supporting FACTS:

Have you presented Ground Two in a prior court action or administrative proceeding?

X YES NO

If yes, explain what court action or administrative proceeding, the result, and date of the result, including any appeals:

BOP Administrative Remedy Process

c. Ground Three:

FCI Estill is not meeting its performance requirements under Section 3621(h)(3).

Supporting FACTS:

The BOP pursuant to the statute must apply the Petitioner's earned time credits for participation.

Have you presented Ground Three in a prior court action or administrative proceeding?

☒ YES ☐ NO

If yes, explain what court action or administrative proceeding, the result, and date of the result, including any appeals:

BOP Administrative Remedy Process

RELIEF

16. Petitioner asks that the Court grant the following relief:

The Court should order that BOP grant Petitioner 365 days and any other relief deemed applicable.

Petitioner also requests any other relief to which petitioner may be entitled in this proceeding.
(Money damages are not an available remedy in habeas corpus cases.)

I declare, certify, verify, and state **under penalty of perjury** that the foregoing is true and correct.

Signed this 4th day of January, 2021.
(day) (month) (year)



Signature of petitioner

Signature of Attorney(if any)